

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-6093

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

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LE BEAU TOURS INTER-AMERICA, INC.,  
*Plaintiff-Appellant,*  
*against*  
UNITED STATES OF AMERICA,  
*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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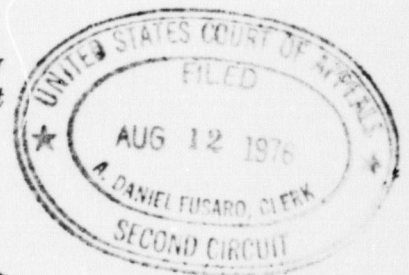
JOINT APPENDIX

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LYNTON, KLEIN, OPTON & SASLOW  
*Attorneys for Plaintiff-Appellant*  
100 Park Avenue  
New York, New York 10017

ROBERT J. FISKE  
United States Attorney  
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New York, New York 10007

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## DOCKET ENTRIES

JUDGE

LE BEAU TOURS INTER-AMERICA, INC. VS. U.S.A.

73 CIV. 73

DATE	PROCEEDINGS	
Apr 10-73	Filed Complaint. Issued Summons.	
5-14-73	Filed summons and entered Marshall's return. Served on: U.S.A., Attorney General, Washington D.C., by P. Troia on 5-2-73 (Certified mail #594828)	
Jun. 15-73	Filed ANSWER by deft. to complaint.	U.S.
Jun. 25-73	Filed Pltff. demand for trial by jury.	
Nov 20-73	Filed Govt's request for admissions. (1)	
Nov 20-73	Filed Govt's request for admissions. (2)	
Dec 14-73	Filed ANSWER and Objection to deft's request for admissions by Le Beau Tours Inter-America, Inc.	
May 9/74	Filed Govt's interrogs. and requests for additional documents.	
Jan. 15-75	Filed Deft's Affidvt & Notice of Motion seeking summary judgment dismissing complaint ret. 1/28/75.	
Jan. 15-75	Filed Deft's Memorandum of Law.	
1/24/75	Filed Pltff's Affidvt in opposition to deft's motion for summary judgment.	
1/24/75	Filed Pltff's Memorandum of Law in opposit on to deft's motion for summary judgment.	
1/24/75	Filed Pltffs Statement under Rule 9g	
1/27/75	Filed USA 's Reply Memorandum of Law.	
5/9/75	Filed Deft's Amended Statement under Rule 9G	
8/9/75	Filed Affidvt of Wm. Roche Bronner for deft re: in further support of motion by deft for summary judgment of dismissal of complaint.	
08-18-75	Filed Pltffs/Deft's of Cross-motion for summary judgment in favor of pltffs against deft upon ground that there is no genuine issue of material fact, ret. 9/16/75, 4:00 p.m.	
09-11-75	Filed Affidvt of AUSA Bronner for deft. in opposition to motion for summary judgment of pltff by notice of cross-motion of 8/18/75.	
03-12-76	Filed OPINION#44044, Both Motions for summary are denied, Gagliardi, J(mn)	
04-29-76	Filed deft's affidavit & notice of motion for summary judgment of dismissal ret. 5/6/76, 4:00 p.m.	
05-03-76	Filed Stip & Order that both parties may renew respective applications to this Court for summary judgment; nothing contained in stip shall prejudice pltff rights to contend services performed in NY which relate to pltff's Latin American Or Caribbean business are not legally relevant to determination of source of pltff's income within meaning of Sec. 921 of 26 USC. Gagliardi	
05-06-76	Filed Pltff's Affidvt & Notice of cross-motion in opposition to deft's renewed motion for summary judgment.	
05-06-76	Filed Pltff's Memorandum of Law in opposition to deft's renewed motion for summary judgment.	
05-21-76	Filed Deft. USA Memorandum of Law.	
05-28-76	Filed OPINION#44497, Deft's motion for summary judgment dismissing complaint is granted. Gagliardi, J.	
06-04-76	Filed JUDGMENT, Order that deft have judgment against pltff dismissing complaint. Cik(mn)	
06-08-76	Filed Pltff's Notice of Appeal from order granting deft's motion for summary judgment dismissing complaint entered on 5/23/76 by Hand to AUSA Bronner via Marian Bryant, Legal Clerk, U.S. Atty's office on 6/8/76	
06-08-76	Filed Bond Undertaking for costs on appeal in sum of \$250. (National Surety Corporation)	
06-15-76	Filed Pltff's Amended Notice of Appeal from Order granting deft's motion for summary judgment dismissing complaint of 5/28/76 rather than from (By Hand ---- to AUSA Bronner, SDNY, on 6/16/76 via Marian Bryant, Legal Clk., U.S. Atty's Office)	



GOVERNMENT'S NOTICE OF MOTION FOR  
SUMMARY JUDGMENT OF DISMISSAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

LE BEAU TOURS INTER-AMERICA, INC.,:

Plaintiff, :

- v -

: NOTICE OF MOTION

UNITED STATES OF AMERICA, :

73 Civ. 1907 LPG

Defendant.. :

----- x

Please take notice, that upon the annexed Statement pursuant to Local Rule 9 G of this Court, and upon the Memorandum of Law submitted herewith, the defendant, the United States of America, will submit a motion to Honorable Lee P. Gagliardi, United States District Judge, on Tuesday, January 28, 1975, at 4:00 P.M., seeking summary judgment dismissing the complaint.

Dated: New York, New York  
January 14, 1975

Yours, etc.,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for defendant

A 3

*Government's Notice of Motion for  
Summary Judgment of Dismissal*

By: William R. Bronner

WILLIAM R. BRONNER

Assistant United States Attorney

Office and Post Office Address:

United States Courthouse

Foley Square

New York, New York 10007

Tel.: 791 1946

TO:

Lynon, Klein, Opton and Saslow, Esqs.

100 Park Avenue

New York, New York 10017



A 4

## GOVERNMENT'S STATEMENT UNDER RULE 9G

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LE BEAU TOURS INTER-AMERICA, INC., :

Plaintiff, : STATEMENT UNDER RULE  
9G

-v- :

UNITED STATES OF AMERICA, :

73 Civ. 1907 LPG

Defendant. :

-----X  
Pursuant to the General Rules of this Court,  
defendant hereby enumerates the following material matters  
as to which there is no genuine issue to be tried:

1. Plaintiff filed timely corporate income tax returns for the years 1966 through 1968, paying in full the liabilities reported.
2. Pursuant to a statutory notice of deficiency dated October 1, 1970, taxpayer was timely assessed the deficiencies in suit on March 5, 1971.
3. The statute of limitations for assessment purposes was extended by the taxpayer for the year 1966 until December 31, 1970.
4. The deficiencies in suit were paid in full on March 19, 1971.
5. On May 5, 1971, the Internal Revenue Service

received taxpayer's Forms 843, claim for refund; these claims were disallowed by certified mail letter on July 13, 1972.

6. Le Beau Tours Inter-America, Inc. ("Le Beau") is and since 1966 has been a New York corporation.

7. Le Beau Tours, Inc. ("Tours") is and since 1966 has been a New York corporation with headquarters in New York City.

8. The same individuals who are shareholders, officers, and directors of Tours are shareholders in the same proportions, officers, and directors, of Le Beau. (Answer to Request for Admissions No. 4. ("Admission No. 4"))

9. The accounting ledgers and journals, the stock and minute books, and substantially all other corporate records of Le Beau are maintained at the office of Tours in New York City.

10. The business of Le Beau was previously carried on at least in part by Tours (Answer and Objection to Admission No. 1).

11. Tours is in the same business as Le Beau except that it does not deal in travel to Western Hemisphere countries.

12. Le Beau was incorporated for the sole



purpose of qualifying as a Western Hemisphere Trade Corporation within the meaning of Section 921 of the Internal Revenue Code of 1954, and as such to obtain the benefit of the deduction authorized by Section 922 of the Internal Revenue Code of 1954. (Admission No. 2)

13. Tours at no time qualified as a Western Hemisphere Trade Corporation within the meaning of Section 921 of the Internal Revenue Code of 1954. (Admission No. 3).

14. The gross receipts of Le Beau in the amounts of \$1,591,144.79, \$2,082,615.23, and \$2,389,150.50 for its calendar years ending December 31, 1966, December 31, 1967 and December 31, 1968, respectively, were received by Le Beau in the United States at its offices located at 100 West 42nd Street, New York, New York, from retail travel agents located in the United States. (Admission No. 5)

15. The amounts of \$1,330,944.54, \$1,643,056.19, and \$2,048,372.81 reported by Le Beau on line 2 of its federal income tax returns (Form 1120) for the calendar years ended December 31, 1966, December 31, 1967, and December 31, 1968, respectively, represented the amounts paid by Le Beau to hotels and ground enterprises for hotel accommodations located within and ground services

to be performed within countries, other than the United States, located within the Western Hemisphere. (Admission No. 6) 9

16. Le Beau never qualified to do business in any foreign country, and never paid any income, sales, property, or other tax to any foreign country. (Admission No. 7,8)

17. Le Beau at no time maintained a telephone number in its own name either in the United States or in any foreign country. (Admissions No. 9, 10)

18. The business of Le Beau during the calendar years 1966, 1967, and 1968 consisted in procuring in bulk Central and South American hotel accommodations, land transportation and escort services for United States retail travel agents.

19. The local retail travel agents referred to above resell the tourist accommodations, etc., referred to above to American tourists traveling to Central and South America.

20. Le Beau receives its income by being granted a discount from the foreign hotels and transport entrepreneurs on the regular price charged to individual



American customers, while being paid the list price by the local travel agents; the difference is its income.

21. Le Beau does not book air or sea transportation to Central or South America.

22. Such services as are required by Le Beau to be furnished in New York are provided to it by Tours.

23. The services provided by Tours to Le Beau involve contact with both the local retail travel agents and the foreign entrepreneurs, accounts receivable and accounts payable bookkeeping promotional work, and other services.

24. In 1966 Tours charged Le Beau \$74,259 for services performed; also in 1966, Le Beau declared gross income of \$260,200 on its corporate income tax return.

25. In 1967 and 1968 the percentage of Le Beau's gross income which was paid to Tours for its services was greater than in 1966.

26. In its tax returns for 1966, 1967 and 1968 Le Beau reported figures for gross receipts, as noted in paragraph 14 above and deducted therefrom the amounts

Government's Statement Under Rule 9G

noted in paragraph 15 which it reported as cost of goods sold.

Dated: New York, New York

January 8, 1973

Yours etc.,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendant,  
United States of America

By: *William Roche Stonner*

---

WILLIAM R. BRONNER  
Assistant United States Attorney  
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Telephone: 212-791-1946

TO: Lynton, Klein, Opton  
& Saslow, Esqs.  
100 Park Avenue  
New York, New York 10017



AFFIDAVIT OF HARRY S. LE BEAU IN OPPOSITION  
TO GOVERNMENT'S MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

LE BEAU TOURS INTER-AMERICA, INC., :

Plaintiff, :

- v - :

UNITED STATES OF AMERICA, :

Defendant. :

73 Civ. 1907 LPG

AFFIDAVIT IN OPPOSITION  
TO DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

-----X

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

HARRY S. LE BEAU, being duly sworn, deposes and says:

I am the President of Le Beau Tours Inter-America, Inc.,  
the plaintiff in the above captioned action.

I make this affidavit in support of plaintiff's oppo-  
sition to the defendant's motion for summary judgment.

In 1945, I established my own travel business under  
the style Le Beau Travel Service. My wife, Winifred Le Beau and  
my son Robert S. Le Beau became associated with me in this busi-  
ness. In 1945, we incorporated under the name Le Beau Tours Inc.  
Originally, the business was that of an ordinary retail travel  
agency. Gradually, we developed a wholesale travel business,  
especially the business of procuring so-called packaged tours to  
foreign countries, for American retail travel agents. In 1964 our then  
accountant advised us that the Internal Revenue Code permitted us

*Affidavit of Harry S. Le Beau in Opposition  
to Government's Motion*

to conduct touring business in the Western Hemisphere Co. in a separate so-called Western Hemisphere Trade Corporation which would enjoy income tax advantages. My wife, my son and I who were and are stockholders and active executives in Le Beau Tours Inc. thereupon organized in January 1962, the plaintiff corporation for the purpose of taking advantage of the favored tax treatment accorded by the Internal Revenue Code to Western Hemisphere Trade Corporations.

Plaintiff's method of operation is as follows:

My son or I, or both of us, develop ideas for package tours, the purpose of which is to offer American tourists travel conveniences in the West Indies, Mexico and other countries in the Western Hemisphere, south of the U.S. border. We select countries in which we have developed contacts with hotels and local representatives. Before we select hotels, we inspect them. We make arrangements with local representatives abroad for the purpose of providing local transportation and escort services. We also have established office facilities in the various countries involved, so that American tourists may turn to our local representatives for assistance. Many of the tours which we arrange, are escorted by a guide. The guide meets the tourists at the first port of call abroad, stays with them throughout the tour and leaves them at the last port of call abroad. The guide is furnished by one of the so-called ground operators abroad who acts as our representative.



*Affidavit of Harry S. Le Beau in Opposition  
to Government's Motion*

Likewise, bus transportation and taxi services, as needed, are provided by the ground operators abroad.

The network of service facilities and hotel contacts in Central and South America is at the heart of plaintiff's business. No services are rendered in New York. The activity in New York is limited to offering plaintiff's services in Central and South America.

In response to the Government's REQUEST FOR ADMISSIONS (NO.7), plaintiff admitted that it has not qualified to do business in any foreign country. This admission was based on a legalistic misunderstanding and I wish to retract it as not in accordance with the true facts. Plaintiff and its representatives abroad have complied with such rules and regulations as exist in the various countries in order to permit the described operations in these countries. Plaintiff would not be allowed to operate in the various countries without being accredited to the local hotel associations, as for instance, the Bahamas Hotel Association and the Jamaica Hotel Association. This accreditation to the various local hotel associations abroad must be renewed annually. In addition, plaintiff, as a condition to engage in its business, must maintain membership in the International Air Transport Association (I A T A) in Montreal, Canada - even though plaintiff does not engage in any phase of air transport. This is a matter of good standing in the travel industry of Central and South America.

*Affidavit of Harry S. Le Beau in Opposition  
to Government's Motion*

Attached hereto is a copy of a written agreement between plaintiff and Martin's Tours Ltd. of Kingston, Jamaica, dated December 6, 1965, which is fairly typical of the arrangements which we make with foreign ground operators. Not all our agreements are in writing. In fact, most agreements are made orally, on the occasion when one of plaintiff's executives visits the country involved.

I am informed that the language in the annexed written agreement may be confusing in regard to the financial arrangements which we made with Martin's Tours Ltd. and other ground operators. The usual financial arrangement is as follows:

The ground operator charges us his standard fee, which is the same amount he would charge a retail customer. This is the fee which is incorporated in the price which plaintiff charges its customer. The ground operator then allows plaintiff a commission. When plaintiff pays the ground operator the price collected from the customer, plaintiff withholds that commission and remits the remaining net price to the ground operator.

The financial arrangements with the foreign hotels is similar. The hotels grant plaintiff a commission on their standard price. The standard price is part of the price paid by the customer.

Since plaintiff only works with hotels with whom it has made advance arrangements, it is able to procure satisfactory accommodations for the American tourists and the American retail travel agencies whom it serves.



*Affidavit of Harry S. Le Beau in Opposition  
to Government's Motion*

It is not correct that plaintiff's business consists of buying or leasing hotel space "in bulk" and then marketing it.

It is not correct that the business of Le Beau Tours Inc. (of which I am also President) is identical with the business of plaintiff. It is true that Le Beau Tours Inc. is also engaged in the package tour business, but not in the Western Hemisphere except Canada. (Plaintiff renders no services in Canada). Le Beau Tours is engaged in a variety of other programs such as retail travel business, motorcoach and airplane charter business, railroad and boat cruise business, and fly-drive arrangements.

A list of the hotels and ground operators which plaintiff has used in 1966, 1967 and 1968 in order to serve its American customers is contained in the complaint in this action which I have read. The list is correct.

I attach hereto, photostatic copies of the Federal income tax returns (Form 1120) which plaintiff filed for the years 1966, 1967 and 1968.

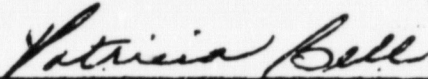
When, in answer to the complaint filed in this action, the Government stated that it lacked sufficient knowledge to form a belief as to the truth of the averments set forth in the complaint, my son and I offered to testify in a pre-trial deposition. Counsel has advised me that this offer was communicated to the United States Attorney, but was not accepted.

*Affidavit of Harry S. Le Beau in Opposition  
to Government's Motion*

I respectfully suggest that the Government should not be allowed to obtain a summary judgment on the basis of its insufficient knowledge of the facts.

  
HARRY S. LE BEAU

Sworn to before me  
this 23rd day of  
January, 1975.



PATRICIA BELL  
Notary Public, State of New York  
No. 60-5251690 Qual. In West. Co.  
Certificate filed in New York County  
Commission Expires March 30, 1976



A 16

LETTER AGREEMENT DATED DECEMBER 6, 1965 ANNEXED  
TO AFFIDAVIT OF HARRY S. LE BEAU

# *Le Beau Tours Inter-America, Inc.*

100 WEST 42ND STREET (CORNER OF AVENUE OF THE AMERICAS-6TH AVE.) NEW YORK 36, N. Y., WISCONSIN 7-6190

NT

December 6, 1965

RECEIVED 12 DEC 1965

Mr. Ferdie Martin  
Martin's Tours, Ltd.  
P. O. Box 226  
Harbour & East St.  
Kingston, Jamaica, W.I.

Dear Ferdie:

This will serve to confirm the arrangements under which you agree to serve as our representative in handling all services and tour arrangements for Le Beau Tours Inc. in Jamaica. This contract is automatically renewable each year unless notification of termination is made by either party by registered letter at least thirty days before each end of each calendar year.

We understand that the compensation to your company for handling and supervising all tour arrangements includes securing reservations at hotels; arranging all meals in accordance with itinerary; providing transfers between airports and to and from restaurants and nightclubs, sightseeing features, transportation throughout Jamaica by private car or motorcoach as well as the payment of the compensation of guides and for the tour escort.

Would you kindly acknowledge this letter indicating your agreement to the above.

Cordially yours,

LE BEAU TOURS INTER-AMERICA, INC.

by

*Robert S. Le Beau*  
Robert S. Le Beau  
Vice-President

Approved

Ferdie Martin  
Martin's Tours Ltd.

by

*For Attention*

FOREIGN RESERVATIONS DEPARTMENT



MEXICO  
Niza 44 Mexico City, D. F.

JAMAICA  
Harbour & East St., Kingston

PUERTO RICO  
El San Juan Hotel, San Juan

VIRGIN ISLANDS  
P.O. Box 1065, St. Thomas

BAHAMAS  
East St. Nassau

CANADA  
1380 Barre St., Montreal



A 17

FEDERAL INCOME TAX RETURN FOR 1966 ANNEXED  
TO AFFIDAVIT OF HARRY S. LE BEAUFORM **1120**  
U.S. Treasury Department  
Internal Revenue Service**U.S. Corporation Income Tax Return**  
For the year January 1-December 31, 1966, or other taxable year beginning  
1966, ending 19  
(PLEASE TYPE OR PRINT)**1966**Check if—  
A Sole proprietorship ☐ or  
partnership ☐ electing under  
sec. 1361 to be taxed as a  
corporation.  
B Consolidated return. ☐  
C Personal Holding Co. ☐  
D Business Code No. (see instr.)Name  
**LE BEAU TOURS INTER AMERICA, INC.**  
Number and street  
**100 W. 42 ST.**  
City or town, State, and ZIP code

E Employer Identification No.

F County in which located.

G Enter total assets from line  
14 Sch. L (see instruction #)

7298

NEW YORK, N.Y.

352160 99

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction Q.

GROSS INCOME	1	Gross receipts or gross sales	Less: Returns and allowances	1591144.79
	2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	Cost of income	1330944.34
	3	Gross profit		260200.45
	4	Dividends (Schedule C)		
	5	Interest on obligations of the United States and U.S. instrumentalities		
	6	Other interest		
	7	Rents		
	8	Royalties		
	9	Net gains (losses)—(separate Schedule D)		
	10	Other income (attach schedule)		
	11	TOTAL income—Add lines 3 through 10		260200.45
DEDUCTIONS	12	Compensation of officers (Schedule E)		
	13	Salaries and wages (not deducted elsewhere)		
	14	Repairs (do not include cost of improvements or capital expenditures)		
	15	Bad debts (Schedule F if reserve method is used)		
	16	Rents		1266.02
	17	Taxes (attach schedule) FRANCHISE		
	18	Interest		
	19	Contributions (attach schedule—see instructions for limitation)		
	20	Losses by fire, storm, shipwreck, other casualty, or theft (attach schedule)		
	21	Amortization (attach schedule)		
	22	Depreciation (Schedule G)		
23	Depletion (attach schedule)			
24	Advertising			
25	(a) Pension, profit-sharing, stock bonus, annuity plans (see instructions)			
26	(b) Other employee benefit plans (see instructions)			
27	Other deductions (attach schedule) EXPENSES ALLOCATED FROM HEBERLE TOURS INC.	100-	74259.76	
28	TOTAL deductions in lines 12 through 26	74159.14	75525.19	
29	Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		184675.06	
30	Less: (a) Net operating loss deduction (see instructions—attach schedule)	53862.33	53862.33	
31	(b) Special deductions (Schedule I)		130812.73	
32	Taxable income (line 28 less line 29)		56290.11	
TAX	33	TOTAL income tax (Schedule J)		
	34	Credits: (a) Tax paid with Form 7004 application for extension (attach copy)		
	35	(b) Payments and credits on 1966 declaration of estimated tax		
	36	(c) Credit from regulated investment companies (attach Form 2439)		
	37	(d) Credit for U.S. tax on nonhighway gas. and h.b. oil (attach Form 4136)		
38	If tax (line 33) is larger than credits (line 34), the balance is TAX DUE. Enter balance here		56290.11	
39	If tax (line 33) is less than credits (line 34) Enter the OVERPAYMENT here			
40	Enter amount of line 34 you want: Credited on 1967 estimated tax Refunded			

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE  
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

Address

15-70040-1

BEST COPY AVAILABLE



. Page 2

Schedule E—COMPENSATION OF OFFICERS (See page 5 of Instructions)

Total compensation of officers—Enter here and on line 12, page 1

Schedule G—DEPRECIATION (See instruction 22)

Taxpayers using Revenue Procedure 62-21: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4.

Schedule H—SUMMARY OF DEPRECIATION

	Straphane	Drengahane	Sum of the years digits	Units of production	Additional year (see line 17)	Other (specify)	Total
1 Under Rev Proc 62-21							
2 Enter							

**BEST COPY AVAILABLE**

*Federal Income Tax Return for 1966 Annexed  
to Affidavit of Harry S. Le Beau*

Form 1170 (1966)

Page 3

## Schedule I—SPECIAL DEDUCTIONS

1 (a) 85 percent of line 1, Schedule C	
(b) 60.208 percent of line 2, Schedule C	
(c) 85 percent of line 3, Schedule C	
2 Total (not to exceed 85 percent of [line 28, page 1, less the sum of lines 3 and 5 of this schedule]). (The 85 percent limitation does not apply to a year in which a net operating loss occurs.)	
3 100 percent of line 7, Schedule C	
4 Dividends paid on certain preferred stock of public utilities (see instructions in case of net operating loss)	53862.33
5 Western Hemisphere trade corporations (not allowable in year of net operating loss)	53862.33
6 Total special deductions—Add lines 2 through 5. Enter here and on line 29(b), page 1.	

## Schedule J—TAX COMPUTATION

1 Taxable income (line 30, page 1)	130812.73
2 Surtax exemption (line 1, \$25,000, or amount apportioned under section 1561, whichever is lesser)	15000-
3 Line 1 less line 2	105812.73
4 (a) 22 percent of line 1	22778.80
(b) 26 percent of line 3	27511.31
(c) If multiple surtax exemption is elected under section 1562, enter 6 percent of line 2	
5 Income tax (line 4, or line 26 of separate Schedule D, whichever is lesser)	56290.11
6 Foreign tax credit (attach Form 1118)	56290.11
7 Line 5 less line 6	56290.11
8 Investment credit (attach Form 3468)	56290.11
9 Line 7 less line 8	
10 Tax under section 541 of the Internal Revenue Code (attach Schedule 1120 PH)	
11 Tax from recomputing prior year investment credit (attach computation)	
12 Total tax—Add lines 9, 10, and 11. Enter here and on line 31, page 1.	56290.11

H Date incorporated

10/1/67

1 (1) Did the corporation at the end of the taxable year own directly or indirectly 50 percent or more of the voting stock of a domestic corporation? Yes ☐ No ☒

(2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50 percent or more of the corporation's voting stock? Yes ☐ No ☒  
(For rules of attribution, see section 267(c).)

If the answer to (1) or (2) is "Yes," attach a schedule showing:  
(a) name, address, and identifying number; and  
(b) percentage owned.

If the answer to (1) above is "Yes," include the taxable income (or loss) of such corporation for the taxable year ending with or within your taxable year.

J Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒

If "Yes," see Inst. K. Enter amount here

K Did you at any time during the year own directly or indirectly any stock of a foreign corporation? Yes ☐ No ☐

If "Yes," attach statement required by instruction N.

L Amount of taxable income (or loss) for: 1963 75481.09  
1964 15055.01 1965

M Did you claim a deduction for expenses connected with:

(1) A hunting lodge ☐ working ranch or farm ☐ fishing camp ☐ resort or party ☐ pleasure boat or yacht ☐ or other similar facility ☐ (Other than where the operation of the facility was the principal business.) Yes ☐ No ☒

(2) The leasing, renting, or ownership of a hotel room or suite ☐ apartment ☐ or other dwelling ☐ which was used by customers or employees or members of their families? (Other than use by employees while in business travel status.) Yes ☐ No ☒

(3) The attendance of your employees' families at conventions or business meetings? Yes ☐ No ☒

(4) Vacations for employees or members of their families? (Other than amount reported on Form W-2.) Yes ☐ No ☒

N Refer to page 7 of instructions and state the:

Principal business activity Travel Agency

Principal product or service

O Were you a member of a controlled group subject to the provisions of section 1561? Yes ☐ No ☒ or section 1562? Yes ☐ No ☒

If "Yes," check type of relationship:

(1) parent-subsidiary ☐

(2) brother-sister ☐

(3) combination of (1) and (2) ☐ (see section 1563)

P Were you liable for filing forms 1096 and 1099 or 1097 for the calendar year 1966? Yes ☐ No ☒

If "Yes," where were they filed?

Q Did you make distributions during the taxable year:

(1) that are not considered wholly taxable as dividends to shareholders because of insufficient earnings and profits, or (2) in a section 333 liquidation where shareholders are taxed on their pro rata share of earnings and profits? — Yes ☐ No ☒  
(See sections 316, 301, and 333.) If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.

R Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? Yes ☐ No ☒

If "Yes," attach explanation.

S Were you a U.S. shareholder of any controlled foreign corporation? Yes ☐ No ☒ (See sections 951 and 957.) If "Yes," attach Form 3646 for each such corporation.



*Federal Income Tax Return for 1966 Annexed  
to Affidavit of Harry S. Le Beau*

Form 1120 (1956)

Page 4

Schedule L—BALANCE SHEETS		Beginning of taxable year		End of taxable year	
ASSETS		(A) Amount	(B) Total	(C) Amount	(D) Total
1	Cash . . . . .		96722.09		191292.09
2	Trade notes and accounts receivable . . . . .				
	(a) Less allowance for bad debts . . . . .		76078.14		210869.70
3	Inventories . . . . .				
4	Gov't obligations: (a) U.S. and instrumentalities . . . . .				
	(b) State, subdivisions thereof, etc. . . . .				
5	Other current assets (attach schedule) . . . . .				
6	Loans to stockholders . . . . .				
7	Mortgage and real estate loans . . . . .				
8	Other investments (attach schedule) . . . . .				
9	Buildings and other fixed depreciable assets . . . . .				
	(a) Less accumulated depreciation . . . . .				
10	Depletable assets . . . . .				
	(a) Less accumulated depletion . . . . .				
11	Land (net of any amortization) . . . . .				
12	Intangible assets (amortizable only) . . . . .				
	(a) Less accumulated amortization . . . . .				
13	Other assets (attach schedule) . . . . .				
14	Total assets . . . . .		124800.23		352160.99
LIABILITIES AND CAPITAL					
15	Accounts payable . . . . .		5721.50		70920.64
16	Mtgs., notes, bonds payable in less than 1 yr. . . . .				
17	Other current liabilities (attach schedule) . . . . .				
18	Loans from stockholders . . . . .				
19	Mtgs., notes, bonds payable in 1 yr. or more . . . . .				
20	Other liabilities (attach schedule) . . . . .				
21	Capital stock: (a) Preferred stock . . . . .	10000-	20000-	10000-	20000-
	(b) Common stock . . . . .				
22	Paid-in or capital surplus (attach reconciliation) . . . . .				
23	Retained earnings—Appropriated (attach sch.) . . . . .				
24	Retained earnings—Unappropriated . . . . .		97078.73		261230.35
25	Less cost of treasury stock . . . . .				
26	Total liabilities and capital . . . . .		124800.23		352160.99

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN		
1	Net income per books . . . . .	184675.06
2	Federal income tax . . . . .	
3	Excess of capital losses over capital gains . . . . .	
4	Taxable income not recorded on books this year (itemize) . . . . .	
5	Expenses recorded on books this year not deducted in this return (itemize): (a) Depreciation . . . \$ . . . . (b) Depletion . . . \$ . . . .	
6	Total of lines 1 through 5 . . . . .	184675.06
7	Income recorded on books this year not included in this return (itemize): (a) Nontaxable interest \$ . . . . .	
8	Deductions in this tax return not charged against book income this year (itemize): (a) Depreciation . . . \$ . . . . (b) Depletion . . . \$ . . . .	
9	Total of lines 7 and 8 . . . . .	0-
10	Income (line 2B, page 1)—line 6 less 9 . . . . .	184675.06

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24, page 4)		
1	Balance at beginning of year . . . . .	97078.73
2	Net income per books . . . . .	181675.06
3	Other increases (itemize) . . . . .	
4	Total of lines 1, 2, and 3 . . . . .	221753.79
5	Distributions: (a) Cash . . . . . (b) Stock . . . . . (c) Property . . . . .	
6	Other decreases (itemize) . . . . .	94220.34
7	Total of lines 5 and 6 . . . . .	205234.4
8	Balance at end of year (line 4 less 7) . . . . .	261230.35

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FEDERAL INCOME TAX RETURN FOR 1967 ANNEXED  
TO AFFIDAVIT OF HARRY S. LE BEAU

<b>FORM 1120</b> U.S. Treasury Department Internal Revenue Service	<b>U.S. Corporation Income Tax Return</b> For calendar year 1967 or other taxable year beginning 1967, ending 1967 (PLEASE TYPE OR PRINT)	<b>1967</b>
Check <input checked="" type="checkbox"/> <b>A</b> Sole proprietorship <input type="checkbox"/> or partnership <input type="checkbox"/> or other entity under section 1361 to be taxed as a corporation <input type="checkbox"/> <b>B</b> Complicated return <input type="checkbox"/> <b>C</b> Personal holding Co. <input type="checkbox"/> <b>D</b> Business Code No. (see instr.)		E Employer Identification No. 13-2527801 F County in which located. NY G Enter total assets from line 14, column (D), Schedule L (See instruction H) 662783 81
Name Le Beau Tours TATER AMERICA, Inc Number and street 100 W 42 ST. City or town, State, and ZIP code NY NY NY 10017		
<b>IMPORTANT</b> —All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction H.		
<b>GROSS INCOME</b>	1 Gross receipts or gross sales Less: Returns and allowances 2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule) 3 Gross profit 4 Dividends (Schedule C) 5 Interest on obligations of the United States and U.S. instrumentalities 6 Other interest 7 Gross rents 8 Gross royalties 9 Net gains (losses)—(separate Schedule D) 10 Other income (attach schedule) 11 <b>TOTAL income—Add lines 3 through 10</b>	2082615.23 1643056.15 439559.07 19648.20 454207.34
<b>DEDUCTIONS</b>	12 Compensation of officers (Schedule E) 13 Salaries and wages (not deducted elsewhere) 14 Repairs (do not include capital expenditures) 15 Bad debts (Schedule F if reserve method is used) 16 Rents 17 Taxes (attach schedule) <i>FRANCHISE TAXES</i> 18 Interest 19 Contributions (attach schedule—see instructions for limitation) 20 Casualty or theft losses (attach schedule) 21 Amortization (attach schedule) 22 Depreciation (Schedule G) 23 Depletion (attach schedule) 24 Advertising 25 (a) Pension, profit-sharing, stock bonus, annuity plans (attach Form 2950) (b) Other employee benefit plans (see instructions) 26 Other deductions (attach schedule) <i>EXPENSES ALLOCATED FROM PERSONAL</i> 27 <b>TOTAL deductions on lines 12 through 26</b> 28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27) 29 Less: (a) Net operating loss deduction (see instructions—attach schedule) (b) Special deductions (Schedule I) 30 Taxable income (line 28 less line 29)	- 4658.00 ✓ - 1675.00 ✓ - 31503.75 ✓ 136578.91 174416.92 284790.82 83061.97 201725.45 90369.66
<b>TAX</b>	31 <b>TOTAL income tax (Schedule J)</b> 32 Credits: (a) Tax deposited—Form 7004 application for extension (attach copy) (b) 1967 estimated tax payments (include 1966 overpayment allowed as a credit) (c) Credit from regulated investment companies (attach Form 2439) (d) Credit for U.S. tax on nonhighway gas and tube oil (attach Form 4136) 33 If tax (line 31) is larger than credits (line 32), the balance is TAX DUE. See instr. G for Tax Deposit System 34 If tax (line 31) is less than credits (line 32) Enter the OVERPAYMENT here 35 Enter amount of line 34 you want Credited to 1968 estimated tax Refunded	90369.66

Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE  
SEAL

Date

Signature of officer

Title

Date

Individual or firm signature of preparer

155 E 44 ST NYC 10017

Address

48-15-70a22-1

MAR 14 1968



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Schedule E—COMPENSATION OF OFFICERS (See instruction 12)Schedule F—BAD DEBTS—RESERVE METHOD (See instruction 15)Schedule G—DEPRECIATION (See instructions for Schedule G)

Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4.

Schedule H—SUMMARY OF DEPRECIATION

	St. a/c line	Debiting balance	Sum of the year's digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1	Under Inv. Props. 62-21 and 62-13						
2	Other						

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Federal Income Tax Return for 1967 Annexed  
to Affidavit of Harry S. Le Beau

Form 1120 (1967)

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## Schedule I—SPECIAL DEDUCTIONS

1 (a) 85 percent of line 1, Schedule C	
(b) 65 percent of line 2, Schedule C	
(c) 5 percent of line 3, Schedule C	
(d) 100 percent of line 4, Schedule C	
Total—Not to exceed 85 percent of (line 28, page 1, less the sum of lines 3 and 5 of this schedule). The 85 percent limitation does not apply to a year in which a net operating loss occurs	
3 100 percent of line 8, Schedule C	
4 Dividends paid on certain preferred stock of public utilities (see instructions in case of net operating loss)	83061.97
5 Western Hemisphere trade corporations (not allowable in year of net operating loss)	83061.97
6 Total special deductions—Add lines 2 through 5. Enter here and on line 29(b), page 1	

## Schedule J—TAX COMPUTATION

1 Taxable income (line 30, page 1)	44380.26
2 Surplus exemption (line 1, \$25,000, or amount apportioned under section 1561, whichever is lesser)	45949.40
3 Line 1 less line 2	176728.75
4 (a) 22 percent of line 1	
(b) 26 percent of line 3	
(c) If multiple surplus exemption is elected under section 1562, enter 6 percent of line 2	
5 Income tax (line 4, or line 26 of separate Schedule D, whichever is lesser)	90329.66
6 Foreign tax credit (attach Form 1118)	90329.66
7 Line 5 less line 6	90329.66
8 Investment credit (attach Form 3468)	90329.66
9 Line 7 less line 8	90329.66
10 Personal holding company tax (attach Schedule 1120 PH)	
11 Tax from recomputing prior year investment credit (attach computation)	
12 Total tax—Add lines 9, 10, and 11. Enter here and on line 31, page 1	90329.66

M Date incorporated

10/1/64

1 (1) Did the corporation at the end of the taxable year own directly or indirectly 50 percent or more of the voting stock of a domestic corporation? Yes ☐ No ☒

(2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50 percent or more of the corporation's voting stock? Yes ☐ No ☒  
(For rules of attribution, see section 267(c).)

If the answer to (1) or (2) is "Yes," attach a schedule showing:

- (a) name, address, and identifying number; and  
(b) percentage owned.

If the answer to (1) above is "Yes," include the taxable income (or loss) from line 30, page 1, Form 1120 of such corporation for the taxable year ending with or within your taxable year.

J. Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒

If "Yes," enter the aggregate gross dollar amount billed during the year

K Amount of taxable income (or loss) from line 30, page 1, Form 1120 for: 1964 150,550.1 1965 794,819.7 1966 120,813.7

L Did you claim a deduction for expenses connected with:

- (1) A hunting lodge ☐ working ranch or farm ☐ fishing camp ☐ resort property ☐ pleasure boat or yacht ☐ or other similar facility ☐ (Other than where the operation of the facility was the principal business.) Yes ☐ No ☒

(2) The leasing, renting, or ownership of a hotel room or suite ☐ apartment ☐ or other dwelling ☐ which was used by customers or employees or members of their families? (Other than use by employees while in business travel status.) Yes ☐ No ☒

(3) The attendance of your employees' families at conventions or business meetings? Yes ☐ No ☒

(4) Vacations for employees or members of their families?

(Other than amount reported on Form W-2.) Yes ☐ No ☒

M Refer to page 7 of instructions and state the:

Principal business activity TRAVEL AGENCY

Principal product or service

N Were you a member of a controlled group subject to the provisions of section 1561 Yes ☐ No ☒ or section 1562?

Yes ☐ No ☒

If "Yes," check type of relationship:

- (1) parent subsidiary ☐  
(2) brother-sister ☐  
(3) combination of (1) and (2) ☐ (see section 1563)

O Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1967? Yes ☒ No ☐

If "Yes," where were they filed?

ANDORA MAN

P Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? Yes ☐ No ☒

If "Yes," attach explanation.

Q Did you pay dividends during the taxable year which you considered to be partially or wholly nontaxable to shareholders? Yes ☐ No ☒ (See sections 301 and 316.) If this is a consolidated return, answer here for parent corporation and on Form 951, "Affiliations Schedule," for each subsidiary.

R Were you a U.S. shareholder of any controlled foreign corporation? Yes ☐ No ☒ (See sections 951 and 957.) If "Yes," attach Form 3646 for each such corporation.



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Federal Income Tax Return for 1967 Annexed  
to Affidavit of Harry S. Le Beau

Form 3120 (1967)

Schedule L—BALANCE SHEETS

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ASSETS	Beginning of taxable year		End of taxable year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
1 Cash . . . . .		141,290.05		248,125.69
2 Trade notes and accounts receivable . . . . .		210,862.90		420,538.10
(a) Less allowance for bad debts . . . . .				
3 Inventories . . . . .				
4 Gov't obligations: (a) U.S. and instrumentalities . . . . .				
(b) State, subdivisions thereof, etc. . . . .				
5 Other current assets (attach schedule) . . . . .				
6 Loans to stockholders . . . . .				
7 Mortgage and real estate loans . . . . .				
8 Other investments (attach schedule) . . . . .				
9 Buildings and other fixed depreciable assets . . . . .				
(a) Less accumulated depreciation . . . . .				
10 Depletable assets . . . . .				
(a) Less accumulated depletion . . . . .				
11 Land (net of any amortization) . . . . .				
12 Intangible assets (amortizable only) . . . . .				
(a) Less accumulated amortization . . . . .				
13 Other assets (attach schedule) . . . . .				
14 Total assets . . . . .		352,160.99		668,723.81
LIABILITIES AND CAPITAL				
15 Accounts payable . . . . .		70,930.64		36,189.14
16 Mtgs., notes, bonds payable in less than 1 yr. . . . .				96,478.81
17 Other current liabilities (attach schedule) . . . . .				26,385.20
18 Loans from stockholders . . . . .				
19 Mtgs., notes, bonds payable in 1 yr. or more . . . . .				
20 Other liabilities (attach schedule) . . . . .				
21 Capital stock: (a) Preferred stock . . . . .		20,000 —	20,000 —	20,000 —
(b) Common stock . . . . .	20,000 —			
22 Paid-in or capital surplus (attach reconciliation) . . . . .				
23 Retained earnings—Appropriated (attach sch.) . . . . .		261,230.25		487,720.66
24 Retained earnings—Unappropriated . . . . .				
25 Less cost of treasury stock . . . . .				
26 Total liabilities and capital . . . . .		352,160.99		668,723.81

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books . . . . .	284,790.40	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax . . . . .		(a) Tax-exempt interest \$ . . . . .	
3 Excess of capital losses over capital gains . . . . .			
4 Taxable income not recorded on books this year (itemize) . . . . .			
5 Expenses recorded on books this year not deducted in this return (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
(a) Depreciation . . . \$ . . . . .		(a) Depreciation . . . \$ . . . . .	
(b) Depletion . . . \$ . . . . .		(b) Depletion . . . \$ . . . . .	
6 Total of lines 1 through 5 . . . . .	284,790.40	9 Total of lines 7 and 8 . . . . .	— 0 —
		10 Income (line 28, page 1)—line 6 less 9 . . . . .	284,790.40

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24, page 4)

1 Balance at beginning of year . . . . .	261,230.25	5 Distributions: (a) Cash . . . . .	
2 Net income per books . . . . .	284,790.40	(b) Stock . . . . .	
3 Other increases (itemize) . . . . .		(c) Property . . . . .	
		6 Other decreases (itemize) . . . . .	
		Fed. Inc. Tax . . . . .	56,290.11
			56,290.11
4 Total of lines 1, 2, and 3 . . . . .	546,020.77	7 Total of lines 5 and 6 . . . . .	56,290.11
		8 Balance at end of year (line 4 less 7) . . . . .	489,730.66

FEDERAL INCOME TAX RETURN FOR 1968 ANNEXED  
TO AFFIDAVIT OF HARRY S. LE BEAU

FORM <b>1120</b>		<b>U.S. Corporation Income Tax Return</b>		<b>1968</b>	
U.S. Treasury Department Internal Revenue Service		For calendar year 1968 or other taxable year beginning 1968, ending 19 (PLEASE TYPE OR PRINT)			
Check if a— A Sole proprietorship <input type="checkbox"/> or partnership <input type="checkbox"/> electing under section 1361 to be taxed as a corporation. B Consolidated return <input type="checkbox"/> C Federal holding Co. <input type="checkbox"/> D Business Code No. (see page 7 of instructions) <b>2298</b>		Name <b>LEBEAU TOURS INTER AMERICA, INC.</b> Number and street <b>100 W 42 ST</b> City or town, State, and ZIP code <b>NY NY</b>		E Employer Identification No. <b>13-252780</b> F County in which located <b>N.Y.</b> G Enter total assets from line 14, column (D), Schedule L (see instructions R) <b>\$853842.49</b>	
IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction N.					
GROSS INCOME	1	Gross receipts or gross sales	Less: Returns and allowances	<b>2392091.81</b>	
	2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	<b>Cost of. / means</b>	<b>2080337.39</b>	
	3	Gross profit		<b>311757.42</b>	
	4	Dividends (Schedule C)			
	5	Interest on obligations of the United States and U.S. instrumentalities			
	6	Other interest		<b>31499.49</b>	
	7	Gross rents			
	8	Gross royalties			
	9	Net gains (losses)—(separate Schedule D)			
	10	Other income (attach schedule)			
	11	TOTAL Income—Add lines 3 through 10			<b>343256.91</b>
DEDUCTIONS	12	Compensation of officers (Schedule E)		<b>20560.00</b>	
	13	Salaries and wages (not deducted elsewhere)			
	14	Repairs (do not include capital expenditures)			
	15	Bad debts (Schedule F if reserve method is used)			
	16	Rents		<b>6200.00</b>	
	17	Taxes (attach schedule) <b>FRANCHISE</b>		<b>38020.81</b>	
	18	Interest		<b>32.09</b>	
	19	Contributions (attach schedule—see instructions for limitation)			
	20	Casualty or theft losses (attach schedule)			
	21	Amortization (attach schedule)			
	22	Depreciation (Schedule G)			
23	Depletion				
24	Advertising				
25	(a) Pension, profit-sharing, stock bonus, annuity plans (attach Form 2950)				
25	(b) Other employee benefit plans (see instructions)	<b>Misc. 1950.00</b>			
26	Other deductions (attach schedule) <b>Expenses Aug. from Le Beau Tours Inc. 1968. 81</b>		<b>162,550.52</b>		
27	TOTAL deductions on lines 12 through 26			<b>227863.72</b>	
28	Taxable income before net operating loss deduction and special deductions (line 11 less line 27)			<b>115893.19</b>	
29	Less: (a) Net operating loss deduction (see instructions—attach schedule)				
29	(b) Special deductions (Schedule I)	<b>30,739.08</b>		<b>30,739.08</b>	
30	Taxable income (line 28 less line 29)			<b>85154.11</b>	
TAX	31	TOTAL TAX (Schedule J)		<b>37,215.64</b>	
	32	Credits: (a) Tax deposited—Form 7004 application for extension (attach copy)			
	32	(b) 1968 estimated tax payments (include 1967 overpayment allowed as a credit—do not include any "quick refund" of overpayment of 1968 estimated tax applied for on Form 4466)	<b>33,120.88</b>		
	32	(c) Credit from regulated investment companies (attach Form 2439)			
	32	(d) Credit for U.S. tax on nonhighway gas and lube oil (attach Form 4136)		<b>33,120.88</b>	
33	TAX DUE (line 31 less line 32). See instruction G for tax deposit system			<b>4,695.76</b>	
34	OVERPAYMENT (line 32 less line 31)				
35	Enter amount of line 34 you want credited to 1969 estimated tax				
Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. It is prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.					
CORPORATE SEAL <b>1-1353</b>		Signature of officer <b>155 E 44 ST. N.Y.C. 10017</b>		Title	



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**Schedule C—DIVIDENDS (See instruction 4)**

1 Inventory at beginning of year . . . . .		1 Domestic corporations subject to 25% deduction . . . . .	
2 Merchandise bought for manufacture or sale . . . . .		2 Certain preferred stock of public utilities . . . . .	
3 Salaries and wages . . . . .		3 Foreign corporations subject to 25% deduction . . . . .	
4 Other costs (attach schedule) . . . . .		4 Dividends from wholly-owned foreign subsidiaries subject to 100% deduction (section 245(b)) . . . . .	
5 Total . . . . .		5 Other dividends from foreign corporations . . . . .	
6 Less inventory at end of year . . . . .		6 Income from controlled foreign corporations (attach Form 3546) . . . . .	
7 Cost of goods sold—Enter on line 2, page 1 . . . . .		7 Foreign dividend gross-up (section 78) . . . . .	
Method of inventory valuation . . . . .		8 Qualifying dividends from affiliated groups (section 243(b)) . . . . .	
Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes," attach explanation.		9 Other . . . . .	
		10 Total—Enter here and on line 4, page 1 . . . . .	

[illegible]

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve		6. Amount charged against reserve	7. Reserve for bad debts at end of year
			4. Current year's provision	5. Recoveries		
1963						
1964						
1965						
1966						
1967						
1968						

Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4.

[illegible]

	Straightline	Declining balance	Sum of the years digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under New Procs 62-21 and 65-12							
2 Other							

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Federal Income Tax Return for 1968 Annexed  
to Affidavit of Harry S. Le Beau

Form 1120 (1968)

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## Schedule I—SPECIAL DEDUCTIONS

- 1 (a) 85% of line 1, Schedule C . . . . .  
 (b) 62.462% of line 2, Schedule C (for taxable years ending after June 30, 1969, see instructions)  
 (c) 85% of line 3, Schedule C . . . . .  
 (d) 100% of line 4, Schedule C . . . . .  
 2 Total—May not exceed 85% of (line 28, page 1, less the sum of lines 3 and 5 of this schedule). The 85% limitation does not apply to a year in which a net operating loss occurs.  
 3 100% of line 8, Schedule C . . . . .  
 4 Dividends paid on certain preferred stock of public utilities (see instructions)  
 5 Western Hemisphere trade corporations (see instructions)  
 6 Total special deductions—Add lines 2 through 5. Enter here and on line 29(b), page 1.

30,779.08

30,779.08

## Schedule J—TAX COMPUTATION (For taxable years ending after June 30, 1969, see page 6 of instructions)

- 1 Taxable income (line 30, page 1) . . . . . 85,164.11  
 2 Surplus exemption (line 1, \$25,000, or amount apportioned under section 1561, whichever is lesser) . . . . . 25,000.00  
 3 Line 1 less line 2 . . . . . 60,164.11  
 4 (a) 22% of line 1 . . . . . 18,236.10  
 (b) 26% of line 3 . . . . . 15,642.66  
 (c) If multiple surplus exemption is elected under section 1562, enter 6% of line 2 . . . . .  
 5 (a) Income tax (line 4, or line 24 of separate Schedule D, whichever is lesser) . . . . . 34,378.76  
 (b) Tax surcharge—10% of line 5(a) . . . . . 3,437.88  
 6 Foreign tax credit (attach Form 1118) . . . . .  
 7 Line 5 less line 6 . . . . . 37,816.64  
 8 Investment credit (attach Form 3466) . . . . .  
 9 Line 7 less line 8 . . . . . 37,816.64  
 10 (a) Personal holding company tax (attach Schedule 1120 PH)  
 (b) Tax surcharge—10% of line 10(a) . . . . .  
 11 Tax from recomputing a prior year investment credit (attach computation)  
 12 Total tax—Add lines 9, 10, and 11. Enter here and on line 31, page 1 . . . . . 37,816.64

## Schedule K—RECORD OF FORM 503 FEDERAL TAX DEPOSITS (List deposits in order of date paid)

Serial number of Form 503	Date of deposit	Amount	Serial number of Form 503	Date of deposit	Amount	Serial number of Form 503	Date of deposit	Amount
470	7/26/68	33,110.98						

M Date incorporated 10/1/64

- I (1) Did you at the end of the taxable year own directly or indirectly 50% or more of the voting stock of a domestic corporation? Yes ☐ No ☒  
 (2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50% or more of your voting stock? Yes ☐ No ☒  
 (For rules of attribution, see section 267(c).)  
 If the answer to (1) or (2) is "Yes," attach a schedule showing:  
 (a) name, address, and identifying number; and  
 (b) percentage owned.  
 If the answer to (1) above is "Yes," also show the taxable income (or loss) from line 30, page 1, Form 1120 of such corporation for the taxable year ending with or within your taxable year.

- J Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒ If "Yes," enter the aggregate gross dollar amount billed during the year.

- K Did you claim a deduction for expenses connected with: Yes No  
 (1) Entertainment facility (boat, resort, ranch, etc.) ☐ ☒  
 (2) Living accommodations (except employees on business) ☐ ☒  
 (3) Employees' families at conventions or meetings ☐ ☒  
 (4) Employee or family vacations not reported on Form W-2 ☐ ☒

- L Taxable income (or loss) from line 30, page 1, Form 1120 for 1965 29,481.05, 1966 130,814.13, 1967 30,779.08

M Refer to page 7 of instructions and state the principal:

Business activity TRAVEL AGENCY

Product or service

- N Were you a member of a controlled group subject to the provisions of:  
 (1) Section 1561? Yes ☐ No ☒  
 (2) Section 1562? Yes ☐ No ☒

If answer to (1) or (2) is "Yes," check type of relationship:

- (a) parent-subsidiary ☐  
 (b) brother-sister ☐  
 (c) combination of (a) and (b) ☐ (see section 1563)

If answer to (2) is "Yes," does section 1562(b)(1)(A) apply (nonapplication of 6% additional tax under section 1562)? Yes ☐ No ☒

- O Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1968? Yes ☒ No ☐

If "Yes," where were they filed ANDOVER, MASS

- P Were you a U.S. shareholder of any controlled foreign corporation? Yes ☐ No ☒ (See sections 951 and 957.) If "Yes," attach Form 3646 for each such corporation.

- Q Did you pay dividends (other than stock dividends and distributions in exchange for stock) during the taxable year which you considered to be partially or wholly nontaxable to shareholders? Yes ☐ No ☒ (See sections 301 and 316.) If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.

- R Did you ever declare a stock dividend? Yes ☐ No ☒



**Federal Income Tax Return for 1968 Annexed  
to Affidavit of Harry S. Le Beau**

Form 1120 (1968)

## Schedule L—BALANCE SHEETS

Page 4

ASSETS	Beginning of taxable year		End of taxable year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
1 Cash		248195.69		106179.24
2 Trade notes and accounts receivable		420588.12		2663.21
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				780000.00
9 Buildings and other fixed depreciable assets			40000.00	
(a) Less accumulated depreciation				40000.00
10 Depreciable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule)				
14 Total assets		668783.81		853942.49
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
15 Accounts payable		36189.14		107609.82
16 Notes, notes, bonds payable in less than 1 yr.		96478.81		83455.54
17 Other current liabilities (attach schedule)		26285.20		
18 Loans from stockholders				
19 Notes, notes, bonds payable in 1 yr. or more				160607.82
20 Other liabilities (attach schedule)				
21 Capital stock: (a) Preferred stock				
(b) Common stock	20000.00	20000.00	20000.00	20000.00
22 Paid-in or capital surplus (attach reconciliation)				
23 Retained earnings—Appropriated (attach sch.)		489730.66		482173.31
24 Retained earnings—Unappropriated				
25 Less cost of treasury stock		( )		( )
26 Total liabilities and stockholders' equity		668783.81		853942.49

## Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	115893.19	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		(a) Tax-exempt interest \$	
3 Excess of capital losses over capital gains		8 Deductions in this tax return not charged against book income this year (itemize)	
4 Taxable income not recorded on books this year (itemize)		(a) Depreciation \$	
5 Expenses recorded on books this year not deducted in this return (itemize)		(b) Depletion \$	
(a) Depreciation \$		9 Total of lines 7 and 8	
(b) Depletion \$		10 Income (line 28, page 1)—line 6 less 9	
6 Total of lines 1 through 5			

## Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year	489730.66	5 Distributions: (a) Cash	
2 Net income per books	115893.19	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize)	
		FED. INC. TAX	
			123450.54
4 Total of lines 1, 2, and 3	605623.85	7 Total of lines 5 and 6	123450.54
		8 Balance at end of year (line 4 less 7)	482173.31

PLAINTIFF'S STATEMENT UNDER RULE 9G

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
LE BEAU TOURS INTER-AMERICA, INC.,	:	
Plaintiff,	:	
- v -	:	PLAINTIFF'S STATEMENT UNDER RULE 9 g
UNITED STATES OF AMERICA,	:	73 Civ. 1907 LPG
Defendant.	:	
-----X		

Plaintiff disputes the following facts averred in defendant's Statement Under Rule 9 g.

1. that the accounting ledgers and journals, the stock and minute books and substantially all other corporate records of plaintiff are maintained at the office of Le Beau Tours Inc. (Defendant's statement No. 9).

2. that Le Beau Tours Inc. is in the same business as plaintiff except that Le Beau Tours Inc. does not deal in travel to Western Hemisphere countries. (Defendant's statement No. 11).

3. that plaintiff never qualified to do business in any foreign country. The quoted admission No. 7 is misleading. (Defendant's statement No. 16).

4. that plaintiff is the purchaser of hotel space in bulk, matched with ancillary ground transportation similarly purchased in bulk. (Defendant's statement No. 18 and memorandum page 5).



*Plaintiff's Statement Under Rule 9G*

5. that plaintiff receives a "discount" and charges "list prices".(Defendant's statement No. 20).

6. that the services required by plaintiff in New York are provided by Le Beau Tours Inc. (Defendant's statement No. 22).

7. that the services which Le Beau Tours Inc. provides to plaintiff involve contact with foreign entrepreneurs. (Defendant's statement No. 23).

8. that plaintiff prefers to be regarded as a seller of personal property.(Defendant's memorandum page 6).

9. that plaintiff is a wholesale purchaser of hotel space.(Defendant's memorandum page 10, footnote No. 3).

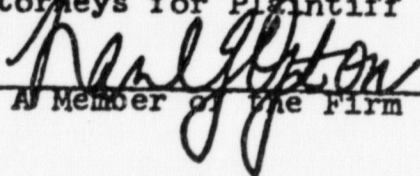
10. that the predominant part of the services from which plaintiff derives its gross income is performed in New York. (Defendant's memorandum page 11).

Dated: New York, New York  
January , 1975.

Respectfully submitted,

LYNTON KLEIN OPTON & SASLOW  
Attorneys for Plaintiff  
100 Park Avenue  
New York, N. Y. 10017  
Attorneys for Plaintiff

By

  
A Member of the Firm

TO: United States Attorney for the  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, N. Y. 10007

## GOVERNMENT'S AMENDED STATEMENT UNDER RULE 9G

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
LEE BEAU TOURS INTER-AMERICA,  
INC.,

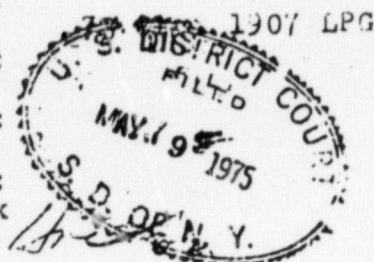
Plaintiff,

-v-

UNITED STATES OF AMERICA,

Defendant.  
-----x

:  
: AMENDED STATEMENT  
: UNDER RULE 9G



Pursuant to the General Rules of this Court,  
defendant hereby enumerates the following material matters  
as to which there is no genuine issue to be tried:

1. Plaintiff filed timely corporate income tax returns for the years 1966 through 1968, paying in full the liabilities reported.
2. Pursuant to a statutory notice of deficiency dated October 1, 1970, taxpayer was timely assessed the deficiencies in suit on March 5, 1971.
3. The statute of limitations for assessment purposes was extended by the taxpayer for the year 1966 until December 31, 1970.
4. The deficiencies in suit were paid in full on March 19, 1971.
5. On May 5, 1971, the Internal Revenue Service received taxpayer's Forms 843, claim for refund; these claims were disallowed by certified mail letter on July 10, 1972.



Government's Amended Statement Under Rule 9G

6. Le Beau Tours Inter-America, Inc. ("Le Beau") is and since 1966 has been a New York corporation.

7. Le Beau Tours, Inc. ("Tours") is and since 1966 has been a New York corporation with headquarters in New York City.

8. The same individuals who are shareholders, officers, and directors of Tours are shareholders in the same proportions, officers, and directors of Le Beau. (Answer to Request for Admissions No. 4. ("Admission No. 4"))

9. (Withdrawn.)

10. The business of Le Beau was previously carried on at least in part by Tours (Answer and Objection to Admission No. 1).

11. Le Beau and Tours are each in the package tour business except that Tours does not deal in travel to Western Hemisphere countries and Tours is engaged in other related travel businesses not engaged in by Le Beau (Affidavit of Harry S. Le Beau, dated January 23, 1975 (the "affidavit"), p.4). Tours previously derived income from some of the sources which were a source of income to Le Beau in the calendar years 1966, 1967 and 1968 (Plaintiff's answer and objection to defendant's request for admissions, dated December 13, 1973).

12. Le Beau was incorporated for the sole purpose of qualifying as a Western Hemisphere Trade Corporation within the meaning of Section 921 of the Internal Revenue

Code of 1954, and as such to obtain the benefit of the deduction authorized by Section 922 of the Internal Revenue Code of 1954. (Admission No. 2)

13. Tours at no time qualified as a Western Hemisphere Trade Corporation within the meaning of Section 921 of the Internal Revenue Code of 1954. (Admission No. 3)

14. The gross receipts of Le Beau in the amounts of \$1,591,144.79, \$2,082,615.23, and \$2,389,150.50 for its calendar years ending December 31, 1966, December 31, 1967 and December 31, 1968, respectively, were received by Le Beau in the United States at its offices located at 100 West 42nd Street, New York, New York, from retail travel agents located in the United States. (Admission No. 5)

15. The amounts of \$1,330,944.54, \$1,643,056.19, and \$2,040,372.81 reported by Le Beau on line 2 of its federal income tax returns (Form 1120) for the calendar years ended December 31, 1966, December 31, 1967, and December 31, 1968, respectively, represented the amounts paid by Le Beau to hotels and ground enterprises for motel accommodations located within and ground services to be performed within countries, other than the United States, located within the Western Hemisphere. (Admission No. 6)

16. Le Beau never qualified to do business in any foreign country, but has complied with such rules and regulations as exist in the various Western Hemisphere countries



in which it is active in order to permit its activities there (affidavit, p.3). Le Beau has never paid any income, sales, property, or other tax to any foreign country. (Admission No.5)

17. Le Beau at no time maintained a telephone number in its own name either in the United States or in any foreign country. (Admissions No. 9, 10)

18. The business of Le Beau during the calendar years 1966, 1967 and 1968 consisted in procuring so-called packaged tours to Western Hemisphere countries for American ("local") travel agents. Packaged tours include pre-arranged hotel accommodations, local transportation and escort services (Affidavit pp. 1-2).

19. The local retail travel agents referred to above resell the tourist accommodations, etc., referred to above to American tourists traveling to Central and South America.

20. Le Beau receives its income by being granted a commission from the foreign hotels and transport entrepreneurs for its services <sup>in</sup> arranging for the use of their hotels and facilities, while being paid the list price by the American travel agents. These commissions have the effect of discounts. (Affidavit, pp. 3-4)

21. Le Beau does not book air or sea transportation to Central or South America.

22. Plaintiff's gross receipts for the calendar

years 1966, 1967 and 1968 were received at 100 West 42nd Street, New York, New York. Administrative services are performed for Le Beau by Tours, and an aliquot share of Tours' administrative expenses are billed to Le Beau for these services. (Income Tax Returns attached to the affidavit).

23. The services provided by Tours to Le Beau involve contact with both the local retail travel agents and accounts receivable and accounts payable bookkeeping, promotional work, and other services.

24. In 1966 Tours charged Le Beau \$74,259 for services performed; also in 1966, Le Beau declared gross income of \$260,200 on its corporate income tax return.

25. In 1967 and 1968 the percentage of Le Beau's gross income which was paid to Tours for its services was greater than in 1966.

26. In its tax returns for 1966, 1967 and 1968 Le Beau reported figures for gross receipts, as noted in paragraph 14 above and deducted therefrom the amounts noted in paragraph 15 which it reported as cost of goods sold.

Dated: New York, New York

May 7, 1975

Yours etc.,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendant,  
United States of America



Government's Amended Statement Under Rule 9G

By: William Roche Bronner  
WILLIAM ROCHE BRONNER  
Assistant United States Attorney  
Office and Post Office Address:  
United States Courthouse Annex  
One St. Andrew's Plaza  
New York, New York 10007  
Telephone: (212) 791-1936

TO: LYNTON, KLEIN, OPTON  
& SASLOW, ESQS.  
100 Park Avenue  
New York, New York 10017

A 37

AFFIDAVIT OF WILLIAM ROCHE BRONNER IN FURTHER  
SUPPORT OF GOVERNMENT'S MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LE BEAU TOURS INTER-AMERICA,  
INC.,

Plaintiff,

-v-

UNITED STATES OF AMERICA,

Defendant.

AFFIDAVIT

73 Civ. 1907 LPS

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

WILLIAM ROCHE BRONNER, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for the  
Southern District of New York and attorney for defendant  
herein. I submit this affidavit pursuant to the suggestion  
of the Court at the last pre-trial conference in further  
support of the motion by defendant for summary judgment of  
dismissal of the complaint.

2. Attached hereto is an amended Statement under  
Rule 90. The amendment is designed to satisfy objections  
raised at the last conference. Thus, wherever defendant's  
original Rule 90 Statement was controverted by plaintiff,  
the Rule 90 Statement has been revised. The revisions are  
generally keyed to the Affidavit of Harry S. Le Beau in



*Affidavit of William Roche Bronner in Further  
Support of Government's Motion*

opposition to the pending motion, and adopt the facts as stated therein. The remainder of this affidavit is a commentary on each change made to the Rule 9G Statement.

3. Paragraphs 1 through 8 were not objected to, and are retained. Paragraph 9 is withdrawn. Plaintiff objected to this paragraph, and at the most recent conference, stated that the objection was to the materiality of the statement, not its truth. The Government submits that the question of the location of plaintiff's books and records cannot seriously be disputed; when your affiant examined them, they were produced at Tours' offices. Nevertheless, we withdraw the statement so as to avoid disputes not necessary to the present motion.

4. Paragraph 10 is retained without objection. Paragraph 11 is rephrased in conformity with the objection in plaintiff's counter-statement, as amplified at the most recent conference. Paragraphs 12 through 15 are retained without objection. Paragraph 16 is rephrased in conformity with plaintiff's retraction of its admission of defendant's request for admissions no. 7, as explained in the Le Beau affidavit.

5. Paragraph 17 is retained without objection. Paragraph 18 is rephrased to meet plaintiff's objection, as was paragraph 11. Paragraph 19 is retained without objection. Paragraph 20 is rephrased to meet plaintiff's contention

*Affidavit of William Roche Bronner in Further  
Support of Government's Motion*

that it is a service business. Paragraph 21 is retained without objection. Paragraph 22 is rephrased as were paragraphs 11 and 18. Paragraph 23 is retained with the exception of three words, "the foreign entrepreneurs," which were erroneously included and are retracted. Paragraphs 24 through 26 are retained without objection.

6. Paragraph 8 of plaintiff's counter-statement relates to a statement in our memorandum concerning plaintiff's preferences, which was derived from the papers then on file. In any event, plaintiff's preferences are irrelevant.

7. Paragraphs 9 and 10 of the counter-statement relate to characterizations which were conclusions the Government believed and continue to believe are supported by the record.

WHEREFORE, defendant the United States of America respectfully renews its motion for summary judgment of dismissal.

*William Roche Bronner*  
\_\_\_\_\_  
WILLIAM ROCHE BRONNER  
Assistant United States Attorney

Sworn to before me this

day of May, 1975



PLAINTIFF'S NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

LE BEAU TOURS INTER-AMERICA, INC.,	:	73 Civ. 1907 (LPG)
Plaintiff,	:	
-against-	:	NOTICE OF CROSS-MOTION
UNITED STATES OF AMERICA,	:	<u>FOR SUMMARY JUDGMENT</u>
Defendant.	:	

- - - - - X

S I R :

PLEASE TAKE NOTICE, that upon the annexed Affidavit of Harry S. Le Beau sworn to the 15th day of August , 1975, the Stipulation of Facts dated August 7, 1975 annexed hereto and upon defendant's motion papers for summary judgment originally returnable January 28, 1975 and hereinbefore adjourned and upon all the pleadings and proceedings heretofore had herein, the plaintiff will move this Court before Hon. Lee P. Gagliardi, United States District Judge, on Tuesday, September 16, 1975 at 4:00 p.m., pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment in favor of plaintiff and against the defendant upon the ground that there is no genuine issue of any material fact and that plaintiff is entitled to judgment as a matter of law.

*Plaintiff's Notice of Cross-Motion for Summary Judgment*

PLEASE TAKE FURTHER NOTICE, that plaintiff respectfully requests oral argument of this cross-motion.

Dated: New York, New York  
August 18, 1975

Yours, etc.,

LYNTON KLEIN OPTON & SASLOW  
Attorneys for Plaintiff

By *Robert F. Carlin*  
A Member of Firm

Office and Post Office Address:  
100 Park Avenue  
New York, New York 10017  
Tel: 683-9500

TO:

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendant  
United States Courthouse  
Foley Square  
New York, New York 10007



AFFIDAVIT OF HARRY S. LE BEAU IN SUPPORT OF CROSS-MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LE BEAU TOURS INTER-AMERICA, INC.,

Plaintiff,

AFFIDAVIT

- v -

UNITED STATES OF AMERICA,

Defendant.

-----X  
STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

HARRY S. LE BEAU, being duly sworn, deposes and says:

I am the President of the Plaintiff in the above-captioned action.

I have read the Stipulation of Facts dated August 7, 1975 signed by our Attorneys and the United States Attorney.

These facts are true.

I reiterate and confirm the statements made in my Affidavit of January 23rd, and I add only the following:

Mention is made in Point 12 of this Stipulation of Facts of part-time employees for which Plaintiff paid salaries. These are the Tour Guides abroad.

Harry S. Le Beau

(Sworn to August 15, 1975)

STIPULATION OF FACTS IN SUPPORT OF CROSS-MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
LE BEAU TOURS INTER-AMERICA, INC., :

Plaintiff, :

- v - :

UNITED STATES OF AMERICA, :

Defendant. :

STIPULATION OF FACTS

73 Civ. 1907 LPG

-----x

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties that, solely for purposes of the summary judgment proceedings, the following may be taken as a complete statement of the material and uncontroverted facts in this action:

1. Plaintiff filed timely corporate income tax returns for the years 1966 through 1968, paying in full the liabilities reported.

2. Pursuant to a statutory Notice of Deficiency dated October 1, 1970, plaintiff taxpayer was timely assessed the deficiencies in suit on March 5, 1971.

3. The deficiencies in suit were paid in full on March 19, 1971, including interest, to wit:

For 1966	\$32,006.09
For 1967	\$46,964.91
For 1968	\$22,727.65

which are the amounts for which refund is claimed in this suit.



*Stipulation of Facts in Support of Cross-Motion*

4. The United States maintains that the deficiencies were properly determined because plaintiff taxpayer did not qualify as a Western Hemisphere Trade Corporation within the meaning of Section 921 of the Internal Revenue Code, 26 U.S.C. §921.

5. Plaintiff was organized as a New York corporation in 1966, for the sole purpose of qualifying as a Western Hemisphere Trade Corporation within the meaning of Section 921, and as such, to obtain the benefit of the deduction authorized by Section 922 of the Code.

6. Le Beau Tours Inc. ("Tours") is, and since prior to 1966 has been, a New York corporation with headquarters in New York City. Since its inception it has been and still is engaged in the travel business. After the organization of plaintiff certain of the sources of income previously reported in Tours' tax returns became the sources of the income reported by plaintiff in the years in question.

7. The same individuals who are shareholders, officers and directors of Tours are shareholders in the same proportions, officers and directors of plaintiff.

8. Plaintiff has established and maintains in the Western Hemisphere outside the continental United States, a network of hotel and service facilities as more particularly enumerated in the complaint.

9. Plaintiff's method of operation is, and during the years in suit, was as follows:

*Stipulation of Facts in Support of Cross-Motion*

The executives of plaintiff developed ideas for package tours, the purpose of which was to offer American tourists travel conveniences in the West Indies, Mexico and other countries in the Western Hemisphere south of the United States border. They selected countries in which contacts existed with hotels and with plaintiff's representatives abroad, many of whom are so-called ground operators, who provide local (bus and taxi) transportation and escort (guide) services as needed.

Hotels are only selected after inspection by officers of plaintiff or by the local representatives on plaintiff's behalf. Plaintiff has established facilities in the various countries involved so that American tourists abroad can seek assistance from plaintiff's local representatives. Many of the tours which plaintiff arranges are escorted by a foreign guide, provided by a ground operator, who meets the tourists at the first port of call abroad, and remains with them until the last foreign port of call.

10. The hotels and ground operators chosen by plaintiff are independent contractors and not plaintiff's employees or under plaintiff's legal control other than by contract.

11. In each of the years in issue each of plaintiff's officers spent more than 50% of his working time inside of New York City.

12. In the years in issue, plaintiff had no



*Stipulation of Facts in Support of Cross-Motion*

employees in New York City; deductions were taken in 1967 (\$4,658.00) and 1968 (\$20,560.00) for salaries paid part-time employees abroad.

13. Plaintiff does not maintain a telephone number in its own name in any foreign country, or in New York City.

14. Plaintiff pays no income, sales, property, or other taxes to any foreign country.

15. Plaintiff and its representatives abroad have complied with such rules and regulations as exist in the various countries in order to permit the described operations in these countries.

16. Plaintiff does not book air or sea transportation, and earns no commission on tickets for air and sea transportation.

17. Plaintiff derives its income as follows:

The American customer pays for hotel and foreign ground operating services at the rate which the foreign hotels and foreign ground operators charge to all retail customers. The foreign hotel and ground operators pay plaintiff what plaintiff denominates a commission. When the retail customer in the United States pays the full price to plaintiff at its New York office, plaintiff withholds the amount of its "commissions" and remits the balance to the hotel or ground operator abroad.

*Stipulation of Facts in Support of Cross-Motion*

18. In most instances, plaintiff acts as a wholesale travel agent, who markets its services through retail travel agents in the United States.

19. Plaintiff maintains its New York office in the office of Tours. Plaintiff's bookkeeping and other clerical work is performed by staff members of Tours in New York. Tours does not charge plaintiff for these services on a per transaction basis; rather, plaintiff pays Tours for these services, annually, in a lump sum.

20. In its tax returns for the years 1966, 1967 and 1968, plaintiff listed as gross receipts (line 1 of the corporate income tax return), the sums which it had collected from its customers. All of its customers were Americans, and all receipts were paid to plaintiff in United States currency at its New York office. In line 2 of these tax returns it listed under the heading "Cost of Goods Sold" the amounts remitted by plaintiff from New York to the foreign hotels and ground operators. Line 3 of such tax returns (the difference between line 1 and line 2) represents the total amount of the money due plaintiff according to its agreements with the various



Stipulation of Facts in Support of Cross-Motion

hotel and ground operators. This constitutes the gross income from plaintiff's operations.

Dated: New York, New York

August 17, 1975

LYNTON KLEIN OPTON & SASLOW  
Attorneys for plaintiff

By: Frank G. Opton  
FRANK G. OPTON

PAUL J. CURRAN  
United States Attorney  
Attorney for defendant

By: William R. Bronner  
WILLIAM R. BRONNER  
Assistant United States Attorney

A 49

AFFIDAVIT OF WILLIAM ROCHE BRONNER  
IN OPPOSITION TO CROSS-MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

LE BEAU TOURS INTER-AMERICA, INC.,:

-v-

AFFIDAVIT

73 Civ. 1907 (LPG)

UNITED STATES OF AMERICA,

Defendant.

----- X

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

WILLIAM ROCHE BRONNER, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney in  
the office of Paul J. Curran, United States Attorney for the  
Southern District of New York, attorney for defendant, and  
am assigned the present case. I am familiar with the  
relevant facts, and I make this affidavit in opposition to  
the motion for summary judgment of plaintiff brought on by  
notice of cross-motion dated August 18, 1975.

2. It is and has always been the position of the  
Government (see page 5 of our original memorandum of law in  
support of our motion for summary judgment, filed January  
15, 1975) that the taxpayer is a sham corporation created



*Affidavit of William Roche Bronner  
in Opposition to Cross-Motion*

for tax purposes only. We contend that the entire income of the taxpayer is attributable to "Tours," its sister corporation. We have not urged this position to the Court in our motion because in our view it could only be established by proof of plaintiff's officers' intent, which was clearly a controverted fact issue. Rather, we determined to accept for purposes of argument only plaintiff's description of its method of doing business and to contend that even under plaintiff's own self-description it could not qualify for the tax status it was seeking.

3. Sometime later, we were approached by counsel for plaintiff, and eventually agreed to prepare a stipulation of facts for the assistance of the Court in connection with the pending summary judgment proceedings. Again, our cooperation in that endeavor was without prejudice to our position that the plaintiff is a "tax sham" (see exhibits A and B hereto'; see also para. 1 of the August 7, 1975 stipulation.

4. It appears from the stipulation and the other papers already filed that plaintiff has no employees, maintains no phone number in its own name anywhere, has no officers who are not also Tours officers, and does all of its clerical business by means of utilization of Tours'

*Affidavit of William Roche Bronner  
in Opposition to Cross-Motion*

employees. If our motion for summary judgment is denied, we believe we are entitled to initiate discovery regarding the details of the overseas activities of the officers of plaintiff and of the alleged "part-time employees abroad" (stipulation para. 12), i.e., foreign tour guides (August 15 Le Beau affidavit), whom we contend are not employees at all, although deductions were taken for them as employees. We have, we believe properly, refused to stipulate regarding all the activities of these employees (by whom they are hired, supervised and paid, etc.) and of plaintiff's officers because the issue of sham depends upon a determination of intent which almost always requires a trial, or at least discovery wherein penetrating questions are propounded.

5. The reason we have not conducted discovery before or during the pendency of our summary judgment motion is because of its expense. By its nature, much of the discovery would have to be taken in South America, with all the attendant travel expenses.

6. We also rely upon our previously submitted memoranda in opposition to the present motion.

WHEREFORE, I respectfully submit that plaintiff's motion for summary judgment should be in all respects denied.

(Sworn to September 9, 1975)

51  
WILLIAM ROCHE BRONNER  
Assistant United States Attorney



EXHIBIT A--LETTER DATED JULY 25, 1975 ANNEXED TO  
AFFIDAVIT OF WILLIAM ROCHE BRONNER

LYNTON KLEIN OPTON & SASLOW

ATTORNEYS AT LAW

100 PARK AVENUE

NEW YORK, N.Y. 10017

(212) MURRAY HILL 3-9500

CABLE: OPTIMUM, NEW YORK

SEYMOUR M. KLEIN  
BERNARD A. SASLOW  
HAROLD S. LYNTON  
FRANK G. OPTON  
HAROLD A. AXEL  
LEONARD M. WALLSTEIN, JR.  
IRA C. LAMBERT  
LLOYD B. GOTTLIEB  
STUART F. CARTOON  
EDWARD L. SKOLNIK  
RICHARD L. BARNES  
DAVID B. MANOWITZ

July 25, 1975

BY HAND

William R. Bronner, Esq.  
Assistant United States Attorney  
U. S. Attorney's Office  
Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007

RE: Le Beau Tours Inter-America, Inc.

v.

United States of America

Dear Mr. Bronner:

With reference to our telephone conversation, I have re-written the proposed Stipulation of Facts and am enclosing three copies thereof, in final form. I hope that you will see your way clear to sign it.

It is a matter of extreme regret that you refused to enter the Stipulation of Facts for all purposes and that you wish to limit the Stipulation to the Summary Judgment proceedings. I understand that you do not wish to bar the defense of "sham". However, I thought it would be possible to stipulate to such additional facts that you think you may need in support of your contention of "sham".

As I advised you, if you insist on moving for Summary Judgment, I intend to do likewise, and I have edited the third line of your Stipulation accordingly.

The other changes in my enclosed Stipulation, as compared with your draft, are as follows:

Point 8: I have eliminated the reference to officers because, as I mentioned to you, there are other executives of the plaintiff who have been active in plaintiff's contact work abroad. Furthermore, I have stricken your words "facility contacts" with which you have replaced my original phrase "facilities". In my view, the words "facility contacts" are not meaningful, and certainly not clearer than the word "facilities".

Point 9: I have restored my original description of the method

Exhibit A Annexed to Affidavit of William Roche Bronner

LYNTON KLEIN OPTON & SASLOW

William R. Bronner, Esq.

July 25, 1975  
Page 2

of plaintiff's operation.. I am of the opinion that your version does not clarify, but tends to obscure the method of operation.

Point 10: This is the third paragraph on Page 3 of your draft which was not contained in my original version. I recognize that you want to have this fact stated and I have no objection thereto.

Point 11: This is the fourth paragraph on Page 3 of your draft and again, this is something which I did not include in my draft. Your statement that plaintiff had no employees is not accurate. Accordingly, I have amended it..

Point 12: This is your former Point 10 and all subsequent points are re-numbered accordingly.

Point 15: Contrary to what I said on the telephone, I retained the reference to the air and seatransportation, and I have elaborated by pointing out that plaintiff does not earn any commissions on the tickets for air and sea transportation.

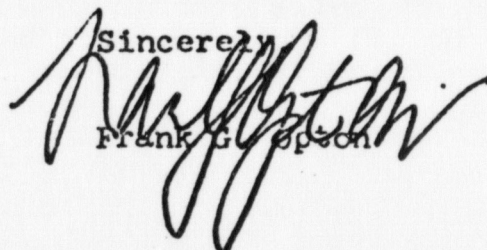
Point 16: This is your former Point 14. You were right in correcting my reference to plaintiff's "profits" to plaintiff's "income". In all other respects, though, I have reverted to my former description of plaintiff's method of deriving its income. Your version, in my opinion, is not clear, and (successfully) obscures the vital fact that plaintiff's income consists of commissions from abroad.

Point 18: As I told you on the telephone, your statement as to how Tours computes its charge, is not correct. If I understood you correctly, the point which you desire to make is that Tours did not charge plaintiff on a per transaction basis. I hope I have covered your point in the last sentence of Point 18.

Point 19: In the tenth line, I have changed the word "money" to "compensation".

Kindly telephone me after you have perused the enclosed form of Stipulation. I hope we can file it before you go on vacation.

Sincerely,



Frank G. Opton

FGO/pb  
Encs.



EXHIBIT B--LETTER DATED JULY 29, 1975 ANNEXED TO  
AFFIDAVIT OF WILLIAM ROCHE BRONNER

WRB:rms

74-1463

M-326

July 29, 1975

Frank G. Opton, Esq.  
Lynton, Klein, Opton and Saslow  
100 Park Avenue  
New York, New York 10017

Re: Le Beau Tours v. United States

Dear Mr. Opton:

We have redrafted and return your stipulation,  
with our comments:

1. Our telephone conversation to the contrary notwithstanding, we have not included any prefatory language concerning the scope of this stipulation and the methodology for your submission of a cross-motion for summary judgment. We did not because, although we hope that both you and ourselves will rely upon our previously-filed memoranda on any motion you might make, we will have to note to the Court our contention that an issue of fact remains concerning the tax sham status of the plaintiff. To protect that right, we felt it more advisable to await your motion. Should you make the motion during the month of August we would appreciate a return date in mid-September, at the earliest, so that we will be able to prepare a response without necessity for requesting adjournments because of the undersigned's vacation during August.

2. We accept your revisions through paragraph 9, where we have reverted to our formulation, with an amendment. Our change consists in the addition of "with plaintiff's representatives abroad, many of whom are..." which we believe meets your objection to our previous formulation, without burdening the stipulation with the repetition involved in the alternate formulation.

3. We renumbered the second paragraph of your paragraph 11, and added a phrase concerning which we have spoken over the telephone. Similarly with our paragraphs 17 and 19, the changes have already been discussed.

*Exhibit B Annexed to Affidavit of William Roche Bronner*

WRB:rms  
74-1463  
M-326

We share your desire that a stipulation be agreed upon and be filed this month.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By: WILLIAM R. BRONNER  
Assistant United States Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
LE BEAU TOURS INTER-AMERICA, INC.,  
Plaintiff,

-against-

UNITED STATES OF AMERICA,  
Defendant.  
-----x

*Ag 4/17*  
**ORIGINAL**

MAR 12 9-05 AM '76

S.D. OF N.Y.

73 Civ. 1907 (C/16)

OPINION

*#44044*

A P P E A R A N C E S:

LYNTON KLEIN OPTON & SASLOW  
100 Park Avenue  
New York, New York 10017  
Attorneys for Plaintiff

FRANK G. OPTON, ESQ.  
Of Counsel

ROBERT J. FISKE, ESQ.  
United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007

WILLIAM R. BRONNER, ESQ.  
Assistant United States Attorney  
Of Counsel

MICROFILM

MAR 1 1976

GAGLIARDI, D. J.

This case raises a question of first impression under Section 921 of the Internal Revenue Code of 1954 (the Code). The parties have stipulated to certain facts and both have cross-moved for summary judgment.

The plaintiff, Le Beau Tours Inter-America, Inc. ("Le Beau Inter-America") sues for a refund of more than \$100,000 in taxes it paid for the years 1966 through 1968 pursuant to a deficiency notice from the I.R.S. for those years. The deficiency resulted from the government's disallowance of plaintiff's claim that it qualified under Section 921 of the Code as a Western Hemisphere trade corporation (WHTC) and thus was entitled to certain deductions provided for in section 922 of the Code. The plaintiff contends that the income from its travel business is derived solely from commissions paid by hotel and tour operators in Latin America, and thus it qualifies as a WHTC under section 921. The Government on the other hand claims that LeBeau Inter-America does not so qualify because (1) less than 95% of its income comes from sources outside the United States, and (2) that it is a sham corporation created solely for the purposes of tax avoidance by its parent company, Le Beau Tours, Inc., which does the same kind of business worldwide. For purposes of this motion, the Government is not pressing the sham corporation claim, which both parties



agree raises factual questions inappropriate for summary judgment.

So far as relevant, the following facts were agreed upon by the parties. Le Beau Inter-America is a New York corporation organized in 1966 for the sole purpose of qualifying as a WHTC in order to permit Le Beau Tours, Inc. to obtain a deduction under section 922 on certain portions of its Latin American operations. Le Beau Inter-America arranged Latin American package tours to be offered to American tourists, and then through contacts with local hotels and tour operators or guides arranged to have the necessary hotel accommodations and tourist services provided. The American customer would pay Le Beau Inter-America in the United States the full retail price for these services and LeBeau Inter-America would then remit that amount less a certain percentage -- which it denominated as a "commission" -- to the local hotel or tour operator who actually provided the service. LeBeau Inter-America personnel or local agents acting on their behalf would inspect the local hotels, and presumably make arrangements with local tour operators. LeBeau Inter-America also maintained facilities in the various countries involved so that American tourists abroad could seek assistance from its representatives. At all times, however, the local hotel and tour service operators were independent contractors not under plaintiff's legal control other than by contract.

LeBeau Inter-America in most instances acted as a wholesale travel agent who marketed its services through retail travel agents in the United States. It maintained its New York office in Le Beau Tours, Inc.'s New York office and its bookkeeping and other clerical work was performed by staff members of Le Beau Tours, Inc. in New York. Le Beau Inter-America paid Le Beau Tours, Inc. an annual lump sum for these services.

Section 921 of the Code defines a WHTC as a domestic corporation all of whose business is done in North, Central or South America or in the West Indies which satisfies the following conditions:

(1) 95 percent or more of its gross income for the three year period immediately preceding the close of the taxable year is derived from sources without the United States; and

(2) 90 percent or more of its gross income from such period or such part thereof is derived from the active conduct of a trade or business. Concededly, Le Beau Inter-America meets the second requirement. It is the first that is here in issue.

Plaintiff contends that all its income is derived from commissions paid to it by hotel and tour operators in Latin America for services rendered there, and therefore the source of more than 95 percent of its income is outside the United States. The Government on the other hand claims



that the source of a substantial portion of the plaintiff's income is from within the United States. According to the Government, Le Beau Inter-America's operations must be characterized according to one of two alternative theories -- either (1) it is a sales business selling in the United States wholesale hotel and tour space in Latin America; or (2) it is a service business providing services which are performed both in the United States and in Latin America. On either theory, the Government asserts more than 5 percent of the plaintiff's income must be considered derived from sources within the United States.

While this Court does not believe that the plaintiff can properly be considered a wholesale seller of hotel space and tours, it does agree with the Government that the plaintiff is engaged in a service business in which services are performed both in the United States and abroad. Therefore, this Court holds that a determination allocating the amount of income derived from sources within and without the United States must be made.

The plaintiff here under the stipulated facts did considerably more than just buy and sell blocks of hotel and tour space. It undertook personal inspections of local hotels, the operators and their capabilities and also had some role in developing and putting together completed package tours. Furthermore, it maintained representatives in various countries to assist American tourists abroad

for whom it had arranged services. This broad range of activities indicates that plaintiff was engaged in a service business -- arranging and packaging tour programs for American customers.

The question remains, however, as to the source of the income derived from this service business. The term "sources outside the United States" is nowhere defined in Section 921. The regulations issued by the Treasury Department under Section 921 state that the amount of income from sources within the United States and without the United States is to be determined under the rules provided for in Code Sections 861-864 and the regulations thereunder. Treas. Reg. §1.921-1(c). Those sections provide that "compensation for labor or personal services performed within the United States" is income from sources within the United States, Code Section 861(a)(3), and that compensation for labor and personal services performed outside the United States is income from sources outside the United States, Code Section 862(a)(3).<sup>1</sup> Therefore, where services are performed both in the United States and abroad, the income from those services is derived partly from sources within and partly without the United States. Tipton and Kalmbach, Inc. v. United States, 480 F.2d 1118 (10th Cir. 1973). Treas. Reg. §1.861-4(b)(2) states that for years prior to 1975:

"... when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is there



shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or service within the United States bears to the total number of days of performance of the labor or service for which the payment is made."

That regulation was changed by the Treasury Department to provide that for years after 1975, the amount of gross income from services performed partially within and partially without the United States "shall be determined on the basis that most correctly reflects the proper source of income under the facts or circumstances of the particular case." Treas. Reg. §1.861-4(b)(1).

In this case the plaintiff contends that all services are performed in Latin America and all its revenue is derived from the local hotel and tour operators for whom it is in essence an agent paid a commission. This court, however, believes that the nature of the plaintiff's activities should not be characterized so narrowly. By its own admission the plaintiff developed package tours and provided assistance to American tourists while in Latin America at least in part through its own representatives. It also on its own account performed the services of selecting, administering and to some extent supervising Latin American travel arrangements and tours for American tourists. In performing these services, it was far more than an agent for its local Latin American contacts. Rather it was a separate service business deriving income from its own performance of certain important and necessary services to its customers.

To the degree that these services were performed by the plaintiff or its agents in Latin America the income derived therefrom was from sources outside the United States. To the degree, however, that the plaintiff carried on any activities in connection with the administration, development or execution of the Latin American tours that gave rise to its income in the years in question in the United States, this would be income from United States sources.

Although the court agrees with the plaintiff that as a general rule a taxpayer may divide his business by forming a separate subsidiary organized solely for the purpose of taking advantage of the WHTC provisions, Commissioner v. Pfondler Inter-American Corp., 330 F.2d 471 (2d Cir. 1964); Revenue Ruling 70-238, 1970-1 Cum. Bull. 61, Le Beau Inter-America may not avoid having income attributable to services performed in the United States for the sole benefit of its Latin American operations characterized as United States source income by contracting for those services with its parent company, Le Beau Tours, Inc. Here, Le Beau Inter-America had to see that these necessary functions were carried out in order to provide the services to its customers from which it derived its gross income. Whether they were provided by employees paid by it directly or employees of its parent company is immaterial to a determination of the place of the performance of the services for purposes of a source of income allocation.<sup>2</sup>

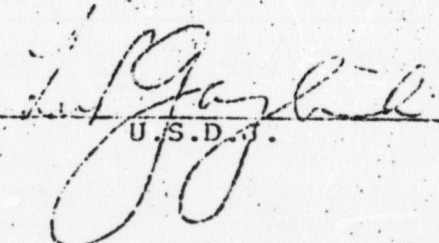


Thus, all time spent by personnel of Le Beau Inter-America of Le Beau Tours, Inc. in performing services which related to the Latin American tours from which Le Beau Inter-America received its income must be considered in determining whether more than five percent of its income was derived from sources within the United States. This includes time spent promoting and advertising tours which Le Beau Inter-America was operating and administrative and clerical work in connection with the tours.

The Government contends that the plaintiff has conceded that it cannot under these circumstances meet the 95 percent source of income test of Section 921. There is, however, no such concession in the record, and thus an evidentiary hearing on this issue must be held. At that hearing plaintiff will have to show that more than 95 percent of the time spent by persons performing services in connection with Le Beau Inter-America's tours took place outside the United States. In computing the amount of services so performed, only those services performed which brought income to Le Beau Inter-America -- not its ground operators -- must be considered.

Accordingly, both motions for summary judgment are denied.

So Ordered.

  
U.S.D.J.

Dated: New York, New York  
March 10, 1976.

## FOOTNOTES

1. Section 863(b) of the Code provides that gross income from sources partly within and partly without the United States may be apportioned according to processes or formulas of general apportionment prescribed by the Secretary or his delegate. Although the statute states specifically that "gains, profits and income -- . . . from transportation or other services rendered partly within and partly without the United States, . . ." are to be treated as derived from sources partly within and partly without the United States, Code Section 863(b) (1), no regulation under this section applies directly to services of the type in question here. Presumably, the general rules on the source of income derived from sources enunciated in sections 861 and 862 thus apply. Commissioner v. Piedras Negras Broadcasting Co., 127 F.2d 260 (5th Cir. 1942); Tipton and Kalmbach, Inc. v. United States, supra.

2. Commissioner v. Piedras Negras Broadcasting Co., supra, whatever its validity after Tipton and Kalmbach is in conflict with the decision here. There the services were all found to be rendered in Mexico with only minor insignificant activities being rendered in the United States. Here it appears that a fairly substantial portion of the activities which generated Le Beau Inter-America's income -- as distinguished from that of its local hotel and tour operators -- took place in the United States.



AFFIDAVIT OF WILLIAM ROCHE BRONNER IN SUPPORT OF  
GOVERNMENT'S RENEWED MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LE BEAU TOURS INTER-AMERICA, INC., :

Plaintiff, :

-v- :

UNITED STATES OF AMERICA, :

Defendant. :

AFFIDAVIT

73 Civ. 1907 (LPG)

-----X

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

WILLIAM ROCHE BRONNER, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney in  
the office of Robert B. Fiske, Jr., United States Attorney  
for the Southern District of New York, and am assigned the  
present matter.

2. On March 10, 1976, this Court denied the  
Government's motion for summary judgment on the sole ground  
that the record did not reflect the admission by defendant  
that more than 5 percent of its officers' time was spent in  
the United States. The Court directed that a trial be held  
on that matter.

3. In order to avoid a trial, the parties have  
stipulated as a fact, and the plaintiff concedes, that more  
than 5 percent of the officers' time was spent in the United  
States.

*Affidavit of William Roche Bronner in Support of  
Government's Renewed Motion for Summary Judgment*

4. The record has now been cured of its defect,  
and we renew our motion for summary judgment. We are obliged  
to make this motion because plaintiff, in order to preserve  
its appellate rights, will not consent that judgment be  
entered against it.

*William Roche Bronner*

WILLIAM ROCHE BRONNER  
Assistant United States Attorney

Sworn to before me this  
29th day of April, 1976

/s

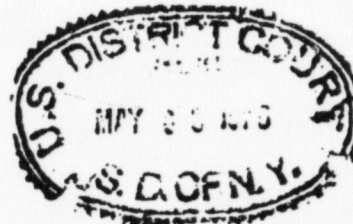
\_\_\_\_\_  
Notary Public for the State of New York  
Qualified in the County of New York  
Commission Expires March 1, 1977



A 68

## STIPULATION AND ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



LE BEAU TOURS INTER-AMERICA, INC.,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

STIPULATION + ORDER  
73 C.M. 1907 (LPG)

WHEREAS, the parties hereto cross-moved for summary judgment, and the Court denied both motions by an opinion and order dated March 10, 1976, and

WHEREAS, in such opinion and order the Court indicated that an evidentiary hearing must be held in order to determine whether Plaintiff has met the 95% source of income test of §921 of 26 U.S.C., and

WHEREAS, the parties are desirous of avoiding the delays and expense required by preparation for and conduct of an evidentiary hearing, it is hereby

STIPULATED, that the time spent in New York by personnel of Le Beau Tours and by Plaintiff's officers exceeds 5% of the activity related to Plaintiff's Latin American tours, exclusive of the activities of Plaintiff's ground operators abroad, and it is further

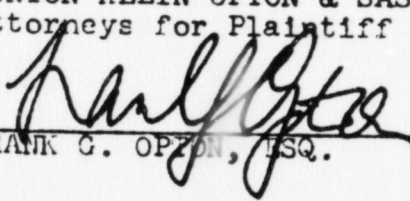
Stipulation and Order

STIPULATED, that both parties may renew their respective applications to this Court for summary judgment, and it is further

STIPULATED, that nothing contained within this stipulation shall prejudice Plaintiff's rights to contend that the services performed in New York which relate to Plaintiff's Latin American or Caribbean business are not legally relevant to the determination of the source of Plaintiff's income within the meaning of §921 of 26 U.S.C.

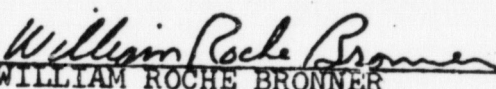
LYNTON KLEIN OPTON & SASLOW  
Attorneys for Plaintiff

By:

  
FRANK C. OPTON, ESQ.

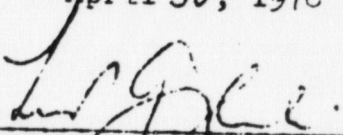
ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York,  
Attorney for Defendant

By:

  
WILLIAM ROCHE BRONNER  
Assistant United States Attorney

SO ORDERED:

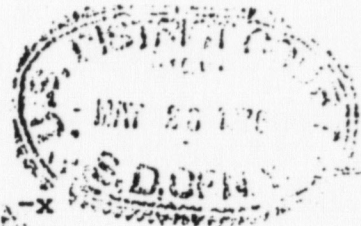
Dated: New York, New York  
April 30, 1976

  
LEE P. GAGLIARDI  
United States District Judge

*ms*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----x  
LE BEAU TOURS INTER-AMERICA, INC.,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

: 73 Civ. 1907

: MEMORANDUM  
: DECISION

: 44497

-----x  
GAGLIARDI, D. J.

Pursuant to a memorandum decision of this court dated March 10, 1976, the parties have now stipulated that more than 5% of the time of the officers of Le Beau Tours Inter-America, Inc., the plaintiff, were spent within the United States. The government therefore renews its motion for summary judgment. The motion is granted.

The plaintiff argues that this court's previous decision is erroneous insofar as it holds that activities which generate plaintiff's income taking place in the United States are to be considered in determining the source of its income for purposes of Section 921 of the Internal Revenue Code. In the previous decision this court found that under the circumstances here all activities of plaintiff's officers in the United States in connection with plaintiff's Latin American tours should be considered in determining whether plaintiff derived more than 5% of its gross

income from sources within the United States. This finding was based on the determination that plaintiff was engaged in a separate service business in which the services rendered consisted primarily of the arrangement, packaging and promotion of Latin American tours. Plaintiff has now stipulated that more than 5% of the work done by its officers and employees in the arrangement, packaging and promotion of the tours was done in the United States. As this work, in this court's view, constituted the performance of the services for which plaintiff was compensated, more than 5% of those services were clearly performed in the United States. Under the accepted rule that the situs of the income producing service is the source of the income from a service business, more than 5% of the plaintiff's income was clearly from sources within the United States. The cases cited by plaintiff in which there was activity in the United States that did not give rise to United States source income all involved the sale of goods with title passing abroad, not the rendition of services performed partially within the United States.

This court's previous decision was not intended to be a rejection of the principles of law set forth in Commissioner v. Piedras Negras Broadcasting Co., 127 F.2d 260 (5th Cir. 1942). The confusion of plaintiff's counsel on this point may result from the inadvertent omission of the word "not" from the first sentence of the second footnote



of the earlier decision. That sentence should read "Commissioner v. Piedras Negras Broadcasting Co., supra, whatever its validity after Tipton and Kalmbach is not in conflict with the decision here." The earlier decision is amended to correct this typographical error.

Defendant's motion for summary judgment dismissing the complaint is thus granted.

So Ordered.

---

U.S.D.J.

Dated: New York, New York  
May 18, 1976.

A 73  
JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LE BEAU TOURS INTER-AMERICA, INC.

Plaintiff

-against-

UNITED STATES OF AMERICA

Defendant  
----- X

: 73 Civil 1907 (LPG)

: JUDGMENT

Defendant having moved the Court for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the motion having come on to be heard before the Honorable Lee P. Gagliardi, United States District Judge, and the Court thereafter on May 26, 1976, having handed down its memorandum opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendant UNITED STATES OF AMERICA have judgment against plaintiff LE BEAU TOURS INTER-AMERICA, INC., dismissing the complaint.

Dated: New York, N.Y.  
June 4, 1976

*Raymond F. Berghardt*  
Clerk



COPY RECEIVED

Robert B. Fiske, Jr.  
UNITED STATES ATTORNEY

8/12/76

Marian J. Bryant